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#### **FEATURE ARTICLES**



#### CYBERSECURITY CULTURE CHANGE — IT'S NO PICNIC

Lawyers need to care enough about data security to learn the basics about cybersecurity.



## LOOKING FOR YOUR DUES STATEMENT? DON'T CHECK YOUR MAILBOX THIS YEAR

Paperless billing is in effect for 2023. Find statement on your State Bar Member Dashboard. **Page 6** 

#### HOLD OFF ON CLE REPORTING

MCLE system upgrade means pause in reporting until summer. **Page 7** 

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## Legal profession has much to give thanks for as New Year approaches

This time of year, many people reflect one clear attribute is this: The judicial upon their good fortune, give thanks, and prepare for a successful new year. Even though we are living through some fairly interesting times right now, there is much to be thankful for both personally and professionally. And I, for one, believe there will be wonderful times

As a Montana lawyer, I am thankful the Founders of this Country were so concerned with creating a government comprised of independent branches subject to robust checks and balances. While keeping those branches separate is sometimes messy, it has served us well.

A neutral, non-partisan, and independent judiciary has been a fundamental component of our American system of government since our founding. One need only reflect upon Alexander Hamilton's Federalist Paper No. 78 to understand the importance of this fundamental concept.

Recently, it has become fashionable for some to state that we are a "republic." As one who ruminated on this topic extensively in my undergraduate studies, I agree that this is a true statement, insomuch as it is akin to saying, "humans are primates."

A "republic" is a general term for a representative form of government, as opposed to, say, a monarchy. Primates generally have opposable thumbs, as opposed to, say, fish. But the law-trained seek accuracy and specificity. Humans are homo sapiens, a very specific type of primate. And the United States of America is a more specific type of republic. America is a liberal democracy. Liberal democracies emphasize the separation of powers, an independent judiciary, and a system of checks and balances between branches of government.

I am also thankful that 50 years ago this year another group of highly accomplished and thoughtful people created our Montana Constitution. That document contains many unique attributes. Like our federal counterpart,

branch of government regulates members of the legal profession as officers of the court; and following the Founders' well-considered concerns, our Courts are independent from the other two branches of government. This is good for our clients, everyday Montanans and their businesses who come to us for assistance, and it is important for maintaining the integrity of our profession and the independent advice we provide.

By the time you read this column, the 2023 Legislative Session may have already started. I am also hopeful that this year's session, which brings together Montanans from all walks of life and professions, will continue our American and Montana tradition of supporting an independent and impartial judiciary. During the last legislative session, bills to politicize judicial races, impeach judges for their rulings, and other misguided efforts, were voted down by the people's representatives.

As we have in the past, the State Bar will continue to oppose legislation which attempts to inject partisan politics into the judicial elections, legislation that fundamentally changes the administration of justice in Montana by threatening the separation of powers, or otherwise attempts to wrest governance of the legal profession from the Judiciary.

I am certain the citizens of Montana will continue to be thankful for our efforts in maintaining an environment where they can trust they will receive independent legal counsel free from political or regulatory tinkering.

And there are other signs of hope as we seek to create a justice system for all. For example, I am encouraged by Gov. Greg Gianforte's proposed budget, as it relates to the Judiciary.

The governor has wisely increased the Judiciary's budget, including proposing funding for drug and treatment courts coming off of federal grant funding.Treatment courts work - they save tax dollars, they help relieve an already overburdened court system, and they



DAVID STEELE

Dave Steele is a sole practitioner at Geiszler Steele, PC. Dave assists both plaintiffs and defendants in a wide variety of legal matters. His practice includes advising clients about the cannabis industry. business and commercial transactions, real estate and real property transactions, contract issues, and other civil matters. Dave also serves as a Mediator, Arbitrator and Settlement Master.

allow Montana citizens an opportunity for rehabilitation while they continue to contribute to their communities and families.

We must remember that this is our American system for resolving disputes between our fellow citizens. It ought to be accessible, fair and just.

And perhaps that is what makes me most optimistic: When I see the impact the State Bar has on all parts of Montana.

Programs like the new Citizens Law School drew Montanans from all parts of the state this past fall to learn about the law. Or our High School Mock Trial program, now entering its fourth year. Montanans care about their judicial system, and I am proud of the work your State Bar is doing to support it.

So, indeed, there is much to be thankful for. And dare I say, there is still much to be optimistic about. I wish you and yours all the best good fortune for the coming year.

WWW.MONTANABAR.ORG **MONTANALAWYER** 

## Hathaway Law Group welcomes Wallis to firm

Hathaway Law Group in Missoula has announced that Austin Wallis has joined the firm.

Wallis graduated from the Alexander Blewett III School of Law at the University of Montana in 2020. During law school



Wallis

she participated in a number of extracurricular activities including the Negotiations Team, UM Outlaws, and ACLU Student Group, and she attended a comparative law study abroad program in Beijing, China.

Her focus in her legal practice has been public interest law and family law. She represented low-income clients in landlord/tenant, public benefit and unemployment cases at Nevada Legal Services in Reno, Nevada. She also worked as the outreach and advocacy coordinator for Trust Montana, a statewide community land trust.

Wallis currently lives in Whitefish, where she enjoys exploring the spectacular mountains and rivers that surround the Flathead Valley. She practices in Flathead and Lake counties.

## Potts opens workers' comp, civil litigation firm in Billings

Adrianna Potts is pleased to announce the opening of Potts Law PLLC in



**Potts** 

Billings. Potts Law PLLC specializes in workers' compensation and general civil litigation. Potts attended Montana State University for her undergraduate degree and graduated from the University of

Wyoming College of Law in 2013. She has been practicing law in Billings for the last nine years, most recently as a partner with Crowley Fleck PLLP's Billings office. She has represented clients in many civil matters including insurance defense, workers' compensation, property disputes, and all types of general civil litigation.

## Pavuk opens employment law practice in Billings

Daniela Pavuk is pleased to announce that she has started Pavuk Law PLLC in



**Pavuk** 

Billings after practicing with Crowley Fleck for over 14 years.

Pavuk will continue to represent employees, business owners, and individuals advising on policies, procedures, and employ-

ment agreements, as well as representing

**MORE NEWS, PAGE 8** 

## Holland & Hart

Holland & Hart is delighted to welcome environmental law attorney Katy Brautigam to our Billings office.



KATY BRAUTIGAM
Associate | Environmental and Natural Resources

W. SCOTT MITCHELL | BILLINGS OFFICE ADMINISTRATIVE PARTNER 406.896.4614

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# SB STATE BAR OF MONTANA

# IMPORTANT DUES INFORMATION: NO MORE PAPER STATEMENTS

The State Bar of Montana is pleased to announce that we will be moving to a new paperless billing system beginning with the upcoming 2023 dues season. Notifications for IOLTA compliance and Pro Bono reporting also will be delivered electronically. Dues, IOLTA and Pro Bono compliance will open in early January 2023, and run through April 1, 2023. We look forward to the transition, and we hope you enjoy the convenience and flexibility that paperless billing and online payment provide.

Because you will no longer receive a dues statement by mail, it is critical that you have a valid and current email address registered with the State Bar and are able to log in to your Member Dashboard. Please log in to your Member Dashboard at www.montanabar.org to make sure that all your contact information is up to date. If you have questions or need help logging in, please email membership@montanabar.org.

Please also note that due to the CLE filing fee increase that went into effect in 2022, the **total fees and assessments for Active Members will now be \$515.** Also, a surcharge will be added to your total if you pay by credit card, but you can avoid the surcharge by making an ACH payment.

Members will see many benefits from paperless billing and compliance notifications, including:

- Ease and convenience. Paying online saves time and fits into busy lifestyles. You can pay from wherever you are, at any time. And no need to worry about the hassle of stamps!
- Eco-friendliness. Paperless billing reduces our environmental impact, using less paper and consuming fewer resources transporting the mail.
- Reliability: You will never have to worry about losing track of your invoice it will always be in your Member Dashboard when you need it.
- Fiscal responsibility. Cutting down on our printing and mail costs mean your bar dues will go further.
- Secure: Online payments with the State Bar of Montana are PCI 3.2 Compliant and PA-DSS 3.2 certified, meeting the most up-to-date industry standards.

You will receive email notifications on January 3, 2023, upon the opening of dues and compliance seasons, and email reminders as the deadlines approach. You will find your dues invoice after signing into your Member Dashboard, where you will also find links for IOLTA Compliance and Pro Bono Reporting.

The State Bar of Montana is committed to using technology wherever possible to help build a smarter and leaner organization. Thank you for your cooperation in helping us make a smooth and successful transition to paperless billing.

THIS CHANGE IS EFFECTIVE IN THE CURRENT (2023) DUES & COMPLIANCE CYCLE. *ALL DUES STATEMENTS* GOING FORWARD WILL BE SENT ELECTRONICALLY.



# MCLE Reporting Requirement Delayed until summer 2023

In order to allow MCLE to efficiently transition into the State Bar of Montana's new membership software system, the Montana Commission of Continuing Legal Education will be delaying MCLE reporting requirements for the coming compliance season.

Once it is online, the new software system will move all of your MCLE reporting and compliance to one convenient location on your State Bar of Montana member dashboard. This system will also allow you to self-report all your CLE credits and view your transcript from your member dashboard. In order to properly build and transition the new system requirements, the MCLE staff will be unable to process and review CLE reporting during this time.

#### When does the reporting delay go into effect?

Jan. 1, 2023. You may still report any credits earned thus far through Dec. 31, 2022. As of January, we will stop accepting self-reported CLE attendance filings until we go live in the new system. We will send notice of the new deadline for the 2022-2023 reporting year as soon as we are able to confirm that the system is live.

#### What does this mean for me?

If you are an attorney who is required to report MCLE (active attorney member), you will not be able to report your credits by March 31, 2023, but will report those credits through your State Bar member dashboard by the delayed deadline. Please continue to obtain your required CLE credits during the pause in reporting so that you are prepared to report your credits when the system goes live.

#### What if my Court-ordered credits are due during the pause in reporting?

If you are subject to a Supreme Court order that you obtain and report CLE hours within a specific deadline, they will still need to be reported to us by the deadline directed in the Court order.

#### Will there be any late fees assessed for the current reporting year?

Due to the delayed deadline for reporting, late fees will be assessed only for noncompliance with the delayed deadline, which will be specified when we are closer to going live in the new system. You will have notice of the new deadline with ample time to complete your reporting.

We have reviewed this transition schedule with the Montana Supreme Court. The Court agrees that the **noncompliance provisions of MCLE Rule 12** will not be applied during the pause in reporting, and will resume once the new system is live.

#### What's next for me?

You will be advised when the software transition is complete and we begin accepting new self-reported CLE attendance filings for the 2022-2023 compliance year, as well as when the delayed reporting deadline is established.

#### When will the new system go live?

Absent any major delays, we anticipate going live during the summer of 2023.

#### **NEWS**

FROM PAGE 5

individuals and companies in litigation in Montana and federal courts and administrative agencies related to discrimination, pay, and wrongful discharge. She will also provide mediation services for employment disputes related to wrongful termination, discrimination, and wage disputes, as well as a wide array of civil litigation matters.

Pavuk graduated from the University of Montana School of Law in 2006 and has since called Billings her home.

## Montana Office of the Public Defender welcomes seven new attorneys to Billings office

Montana Office of the Public Defender's Billings office has the pleasure of announcing seven new hires joining their firm this fall.

Montana Funk comes from Crowley Fleck and after spending the summer in Justice Court is practicing criminal law in front of the Honorable Jessica Fehr.

New graduates Kristen Vicknair of William and Mary, Patrick Rice of University of Richmond and Ryan Doerfler of University of St. Thomas form a team of formidable attorneys in Yellowstone County Justice Court.

Joseph Gorman comes from Colorado where he has years of both civil and criminal practice before joining the Billings office. Katherine Antonson and Ryan Warner both join the office from Moulton Bellingham, leaving civil to practice criminal law before the Honorable Collette Davies and Donald Harris, respectively.

All new attorneys will practice a variety of criminal law ranging from misdemeanors to felonies and focusing solely on representation of indigent clients. The Billings OPD office is thrilled to welcome so many new faces.

#### Brown Law Firm welcomes Knisely to the firm

Brown Law Firm, P.C., with offices in Billings and Missoula, has announced that John R. Knisely has joined the firm in Billings.

Knisely grew up in Billings and graduated cum laude from



Knisely

the University of Wyoming in 2019 with a Bachelor of Arts in Political Science. Following graduation, he worked for the U.S. Senate. He then attended the University of Nebraska College of Law, earning his Juris Doctorate with a litigation concentration and a certificate in pro bono service.

During law school, Knisely worked as a law clerk for the U.S. Attorney's Office, Yellowstone County Attorney's Office, and the Nebraska Department of Administrative

Services. In addition, he worked for Judge L. Steven Grasz of the U.S. Court of Appeals for Eighth Circuit. He capped off law school serving as a volunteer in Yellowstone County's Indian Child Welfare Court and as a student prosecutor in the College of Law's Criminal Clinic.

## CROWLEY FLECK ATTORNEYS

### Is pleased to announce the following Associates to the firm:



Katy Lindberg practices in the firm's Bozeman office. Her practice focuses on estate planning and commercial transactions. Katy received her J.D. from the University of Montana in 2021 and clerked for the Honorable Beth Baker on the Montana Supreme Court.



Andrew Morris practices in the firm's Missoula office. His practice focuses on commercial transactions and estate planning. He received his J.D. from the University of Montana.



Tori Nickol practices in the firm's Missoula office. Her practice focuses on tort, commercial, and appellate litigation. She received her J.D. from the University of Montana in 2019. After law school, Tori clerked for Judge Sidney Thomas on the Ninth Circuit Court of Appeals and Judge Donald Molloy in United States District Court



Kelsey Sabol practices in the firm's Helena office. Her practice focuses on immigration, employment law, and tort litigation. She received her J.D. from the University of Montana.



Kurt Shanahan practices in the firm's Billings office. His practice focuses on energy, environmental, and natural resources. Kurt received his J.D. from the University of Montana.



Dimitrios Tsolakidis practices in the firm's Helena office. His practice focuses on tort, commercial, and appellate litigation. Dimitrios received his J.D. from the University of Montana and clerked for the Honorable Beth Baker on the Montana Supreme Court.

The firm also welcomes: Brandon Pryde (Casper, WY), Randy Rea (Cheyenne, WY) and Trevor Thorvaldson (Sheridan, WY)





Kalkstein

Greshan

#### Hall Booth Smith welcomes Kalkstein and Gresham

Hall Booth Smith, P.C. welcomes Gary Kalkstein as a partner and Joseph Gresham as an associated to its office in Montana as the Atlanta-based firm firm expands its practice in the Rocky Mountain region.

Kalkstein joins the firm as a seasoned Montana attorney with more than 35 years of legal experience in state and federal courts. He defends hospitals, clinics, physician practices, doctors, nurses, physician assistants, professional counselors and other health care professionals in a wide range of litigation such as medical malpractice, traumatic injury, misdiagnosis and negligence.

He also assists clients with professional licensing and credentialing matters, and often appears before the Montana Medical Legal Panel and other oversight and regulatory groups. He is frequently invited to speak about liability and risk management issues at educational seminars for physicians, dentists, insurance company representatives and attorneys.

Before joining HBS, Kalkstein was Founding Partner of Kalkstein Law Firm, P.C. in Missoula, which specialized in

## SUBMITTING MEMBER NEWS ANNOUNCEMENTS

The Montana Lawyer welcomes news from members including announcements of new positions, advancements, honors, appointments and publications. There is no charge for Member News submissions.

If you have news you would like to submit to the Member News section, you can email it to editor@montanabar.org. Please direct any questions to the same address.

medical malpractice defense and other health care litigation throughout the state of Montana. He earned a J.D. from the University of Montana School of Law.

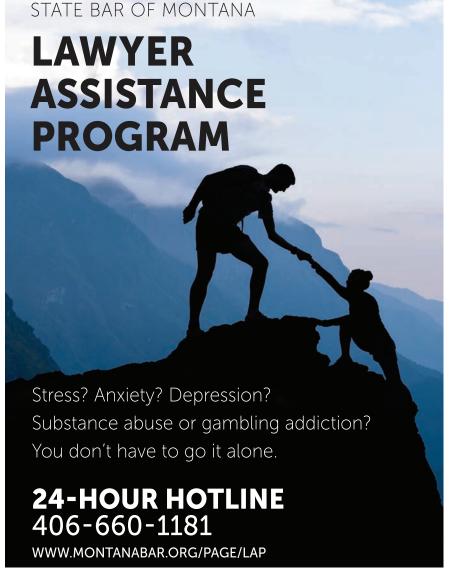
Gresham joins HBS as an Associate, and he focuses his practice on appellate, business transactions, construction, corporate and partnership, general liability, medical malpractice, and real estate matters. Before joining HBS, he was a judicial law clerk for the Honorable Sam E. Haddon of the United States District Court for the District of Montana. Earlier in his career, Gresham worked for his family's construction and land surveying firm. He earned a joint J.D. and M.B.A. from the University of Montana and was Co-Editor-in-Chief of the Montana Law Review Gresham also holds a B.A. in History from the University of Georgia and is an Appalachian Trail 2000-Miler.

## Brautigam joins Holland & Hart's Billings office

Holland & Hart is pleased to announce the addition of Katy Brautigam to our Billings team as an associate attorney.

Brautigam attended the University of Montana School of Law where she served as Executive Editor of the Montana Law Review and then served as a law clerk to Montana Supreme Court Justice James

She practiced from Holland & Hart's Anchorage, Alaska, office before returning to Montana in Fall 2022. Her practice focuses on environmental permitting and natural resources litigation. She also helps clients through remediation and repurposing of contaminated properties and hazardous waste management.



## Gustafson, Rice win re-election to Supreme Court

Justice Ingrid Gustafson and Justice Jim Rice both won re-election as Montana Supreme Court justices in November.

Justice Gustafson held off challenger Helena attorney James Brown by an 8-point margin in a hotly contested campaign that shattered records for outside spending in a Montana Supreme Court race. The Montana Free Press reported that the two candidates received \$2.9 million in third party spending in October alone. The previous record for a Supreme Court race was the \$1 million that outside groups spent in the 2016 race between Justice Dirk Sandefur and his challenger, current Lt. Gov. Kristen Juras.

Justice Gustafson was appointed to the Supreme Court in 2017 by Gov. Steve Bullock. She previously served as a judge in Montana's 13th Judicial District.



**Justice Ingrid Gustafson** 

In the other Supreme Court contest, by contrast, Justice Rice outpolled challenger Billings Bill D'Alton, who intentionally raised no money for his campaign, by a 56-point margin.



**Justice Jim Rice** 

Justice Rice was appointed to the Supreme Court in 2001 by Gov. Judy Martz. He was retained in 2002 and 2006 and won re-election over W. David Herbert in 2014.

#### Six Montana attorneys elected to legislature

Six Montana attorneys won election to the Montana Legislature in November voting.

The following lawyers won election to the House of Representatives:

- Bill Mercer, R-HD 46, Billings, 64-36 over Democrat Tim Warburton;
- Laura Smith, D-HD 79, Helena, 61-39 over Republican Keith Pigman;
- Tom France, D-HD 94, Missoula, 56-44 over Republican Rebecca Mapston;
- Katie Sullivan, D-HD 89, Missoula, 62-38 over Republican

Gary Wanberg;

• Ed Stafman, D-HD 62, formerly a Florida attorney, also was elected to his second term in the House.

The following won election to the Senate:

- Shane Morigeau, D-SD 48, Missoula, 64-36 over Republican Jason Van Horn;
- Andrea Olsen, D-SD 50, Missoula, 72-27 over Republican Nick Knowles.

The 2023 Legislative Session is scheduled to run from Jan. 2 through approximately April 28.

## Incumbents re-elected to District Court judge seats

Incumbents won re-election in all 11 state races on Montana ballots in November elections.

In the only contested race, the Honorable David Grubich was elected to the unexpired term he was appointed to in 2021 by Gov. Greg Gianforte. Judge Grubich held off Michele R. Levine, who was appointed to the seat by previous Gov. Steve Bullock, but whom the 2021 Legislature refused to confirm.

The following judges were retained in other races:

**MORE ELECTION, PAGE 12** 



## Russ Fagg & Assoc.

22-year State Judge

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## Johnstone nomination to US Ninth Circuit clears Judiciary Committee, heads to Senate

University of Montana law professor Anthony Johnstone's nomination as judge for the Ninth Circuit Court of Appeals has passed the Senate Judiciary Committee by a vote of 11-10-1.

The nomination now awaits a vote by the full Senate, controlled by Democrats.

Johnstone was nominated to replace former Chief Judge Sidney Thomas of Montana, who plans to take senior status.

Johnstone is the Helen and David Mason Professor of Law and an affiliated Professor of Public Administration at the Alexander Blewett III School of Law at UM where he has taught since 2011. He previously served as solicitor for the State of Montana, as an assistant attorney general at the Montana Department

of Justice, and as a litigation associate at Cravath, Swaine and Moore LLP in New York. He also served as a law clerk for Judge Thomas on the Ninth Circuit from 1999 to 2000.

"Anthony Johnstone has a proven record of applying the law without bias and standing up for our constitution, which will make him an excellent judge on the Ninth Circuit Court of Appeals," said Sen. Jon Tester, D-Mont., in a statement. "He has served the people of Montana with fairness and integrity, and I have no doubt that he'll continue to do the same at the federal level.

He is a 1995 graduate of Yale College and earned his J.D. from the University of Chicago in 1999.



**Anthony Johnstone** 

## Christensen to take senior status as federal judge

U.S. District Judge Dana L. Christensen of Missoula has announced that he plans to assume senior judge status.

According to the U.S. District Court for the District of Montana, Judge Christensen's senior status will be effective upon the appointment of his successor. He informed President Biden and Montana's congressional delegation of his decision by letter on Dec. 8. Senior status, which is retirement from active service while retaining judicial office, is available to federal district judges who satisfy certain age and length-of-service requirements. Senior judges typically take a reduced workload but continue to be eligible to preside over all types of federal cases.

Judge Christensen, who served as the Chief Judge for the District of Montana from 2013-2020, was nominated to the federal bench by President Obama and received his judicial commission on Dec. 6, 2011. According to a news release from the District of Montana, he took an active role in court governance and administration while balancing a full-time caseload

during his tenure as chief judge. During that time, he oversaw the reorganization of the federal courts in Montana. consolidating the administrative functions of the District and Bankruptcy Clerk's Offices and the Probation and Pretrial Services Office. He has served on the Ninth Circuit's Wellness Committee (2013-2022) and Trial Improvement Committee (Sept. 2022-present). He is currently a Ninth Circuit Representative to the Federal Judges Association.

Judge Christensen was raised in Missoula and attended Stanford University, graduating with a B.A. degree in history in 1973. He graduated from the University of Montana School of Law in 1976. He practiced law in Montana for 35 years before his appointment to the federal bench. He is a judicial fellow in the American College of Trial Lawyers, American Board of Trial Advocates, and the International Society of Barristers.

His move to senior status will create a vacancy in the district's statutory allotment of three active-duty federal district judges. President Biden is expected



The Honorable Dana Christensen

to confer with Montana's senators in selecting a nominee to replace Judge Christensen, and the nominee's name will be presented to the U.S. Senate for its consideration and approval. The Honorable Brian Morris and the Honorable Susan Watters are the two other active duty federal judges in Montana

## **Recent Montana Supreme Court orders**

#### DISCIPLINE

## McCormack receives indefinite suspension

The Montana Supreme Court indefinitely suspended Kalispell attorney James T. McCormack from the practice of law in Montana for no less than one year following his conviction for felony criminal endangerment.

The court concluded that McCormack violated Rule 8A(3) of the Montana Rules for Lawyer Disciplinary Enforcement by engaging in conduct that resulted in the conviction of a criminal offense and Rule 8.4(b) of the Montana Rules of Professional Conduct by committing professional misconduct in committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

The court also agreed with the Commission on Practice's findings that McCormack's failure to engage in the disciplinary process and his lack of remorse exacerbated the violations by demontrating lack of respect for the profession.

#### **APPOINTMENTS**

The Montana Supreme Court appointed the following Montana lawyers, judges and other Montanans to commissions and committees:

**Commission on Practice:** Dan O'Brien of Malta to the Commission on Practice, representing Area E.

O'Brien replaces the Honorable Heather Perry, who resigned following her appointment as district court judge for the 10<sup>th</sup> Judicial District. Area E consists of Fergus, Judith Basin, Petroleum, Chouteau, Hill, Liberty, Golden Valley, Meagher, Musselshell, Wheatland, Daniels, Roosevelt, Sheridan, Carter, Custer, Fallon, Garfield, Powder River, Rosebud, Treasure, Blaine, Phillips, and Valley counties.

**Drug Treatment Court Advisory Committee:** All seven members of the committee were reappointed after their terms expired.

Members are the Honorable Kurt Krueger (chair), the Honorable Matthew Cuffe, the Honorable Mary Jane Knisely, the Honorable John W. Larson, the Honorable John C. Brown, the Honorable Nickolas Murnion, and the Honorable Brenda Gilbert. Their threeyear terms expire May 30, 2025.

Commission of Continuing Legal Education: Lisa Mecklenberg Jackson, Michele Peterson-Cook and Cynthia Thiel were reappointed after their terms expired. Their new three-year terms will expire Sept. 30, 2025.

**District Court Council:** The Honorable Robert L. Deschamps III was re-elected by members of the Montana Judges Association for a three-year term ending June 30, 2025.

The Honorable Jessica T. Fehr and the Honorable Brenda Gilbert were elected by MJA members to finish out the terms of the Honorable Gregory R. Todd and the Honorable Jon Oldenburg, who have retired. Their terms will end June 30, 2024, and June 30, 2023, respectively.

The court also reappointed Christine

Kowalski, the Juvenile Probation Officer member of the council, to a term ending June 30, 2025.

Access to Justice Commission: Four new members were appointed to the commission, and three members were reappointed.

New members are Margaret Weamer, as a representative of the Montana Justice Foundation; Juli Pierce of Billings, as a representative of the State Bar of Montana; Lillian Alvernaz, as a representative of Montana's Native Communities; and Assistant Professor Kekek Stark, as the representative of the Alexander Blewett III School of Law at the University of Montana. Reappointed were Katy Lovell of Montana DPHHS Legal Services Developer; the Honorable Stacie FourStar of Fort Peck Tribal Court; and Alison Paul, executive director of Montana Legal Services Association.

Their terms will run through Sept. 30, 2025, except for Professor Stark, who will finish the remainder of a term running through Sept. 20, 2024.

Criminal Jury Instructions
Commission: Mardell Ployhar of the
Montana Attorney General's Office was
reappointed to a four-year term on the
Commission that runs through Aug. 1,
2026.

Commission on Courts of Limited Jurisdiction: The Supreme Court appointed Jeff Hindoien, Great Falls City Attorney, and reappointed Scott Twito, Yellowstone County Attorney, to the commission. Hindoien replaces Charlie Harball, who retired his position as the city attorney member of the commission.

#### **ELECTION**

FROM PAGE 10

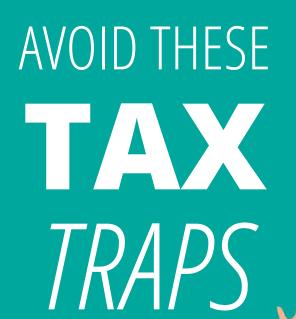
- The Honorable Chris Abbott, District 01 - Dept 4 (Lewis and Clark and Broadwater counties)
- The Honorable Jason Marks, District 04 - Dept 4 (Missoula and Mineral counties)
- The Honorable David Grubich, District 08 - Dept 1 (Cascade County)

- The Honorable Dan Wilson, District 11 - Dept 4 (Flathead County)
- The Honorable Danni Coffman, District 11, Dept 5 (Flathead County)
- The Honorable Brett D Linneweber, District 13 - Dept 4 (Yellowstone County)
- The Honorable Mary Jane
   Mccalla Knisely, District 13 Dept 6
   (Yellowstone County)
  - The Honorable Peter Ohman,

District 18 - Dept 1 (Gallatin County)

- The Honorable Andrew "Andy" Breuner, District 18, Dept 4 (Gallatin County)
- The Honorable Matthew J. Cuffe, District 19 - Dept 1 (Lincoln County)
- The Honorable Howard F. Recht, District 21 Dept 1 (Ravalli County)









# IN LAWSUITS INVOLVING EMPLOYMENT

By Robert W. Wood

## No matter what, there will always be tax issues for all involved in employment suits

Lawsuit settlements and judgments are taxed based on the origin of the claim, essentially the item for which the plaintiff is seeking to recover. The basic idea is that if you didn't have to sue but had been paid in the ordinary course of events, your taxes should be the same. Claims arising in and about employment are one of the most common kinds of legal disputes.

Some go to verdict, but many more settle. Some are resolved pre-filing and never make it to court. Disputes may be resolved with demand letters or a draft complaint, in mediation, etc. But no matter how the dispute is resolved, there is going to be a settlement agreement. And no matter what, there are going to be tax issues, for both the employer and the employee.

Ideally, each side thinks about taxes in advance and tries to implement what they want in the settlement agreement. But that doesn't always happen, and even if the parties try, they may fail to hammer out how they want the arrangement to be taxed. The parties may misunderstand the tax issues or may fail to consider them entirely until the following year when IRS Forms 1099 arrive. Most employees know that they will receive an IRS Form W-2 for their wages in January for the prior year.

But January is also when Forms 1099 arrive. Many litigants panic when tax forms they did not expect land in their mailbox. Here are some common legal traps regarding taxes in employment case settlements.

#### Trap #1: Plaintiffs Can Be Taxed on Their Gross Recoveries, Including Legal

This is a big issue, not just for employment cases. Most plaintiffs use contingent fee lawyers, and many assume that they are only responsible for the *net* money they collect, after contingent legal fees. If you settle for \$1M, and your lawyer takes \$400k off the top, isn't your tax problem always limited to \$600k?

Hardly. Just because a portion of your recovery is paid to your attorney does not mean you do not owe tax on that portion. In Banks v. Commissioner, the U.S. Supreme Court ruled that plaintiffs must include contingent legal fees in their gross income. Hopefully they can find a way to deduct or offset the fees, which in some kinds of cases can be tough.2

Fortunately, in employment cases, you should not need to pay taxes on the legal fees your lawyer receives, if you use a contingent fee lawyer. But you still have to report them on your tax return as gross income or the IRS will think you are shorting them. After all, the Banks case on legal fees is from the U.S. Supreme Court.

The mechanics of claiming the deduction have been tough until recently. For 2021 tax returns, the tax return form was improved so there will hopefully be fewer problems with claiming it.3 However, if you are using an hourly lawyer and the case spans multiple tax years, there's no easy answer to avoid paying tax on the legal fees.4 Historically, most legal fees could be claimed as a miscellaneous itemized deduction even if there was no related income. But miscellaneous itemized deductions were suspended by Congress starting in 2018 and continuing through the end of 2025.5

#### **Trap #2: Employment Settlements** Often Are Not All Wages

Usually, a portion of the claim is for lost wages, back pay, front pay, or both. But some amount usually represents a payment for emotional distress or other non-wage damages. The IRS recognizes

this, making clear in its instructions to Form 1099-MISC that non-wage damages should be reported on a Form 1099, not on a Form W-2. Some employers seem surprisingly unconcerned about withholding though their withholding obligation for at least some of the funds seems clear. On the other extreme, some employers insist on withholding on most or even all of a settlement, even though a big share of the settlement should arguably not be subject to withholding.

In my experience, if there is something reasonable in the wage category, the IRS rarely disturbs it. That is one reason it is wise for plaintiff and defendant to come to an agreement. In 2009, the IRS released a memorandum entitled "Income and Employment Tax Consequences and Proper Reporting of Employment-Related Judgments and Settlements."6 It is not technically authority, but it is still interesting reading about IRS views on employment-related settlements and judgments.7

#### Trap #3: Not all Employment Settlements Have Wages

The fact that the case arises out of an employment setting does not always mean that some of the settlement must represent wages. Even if the case is between a current or former employee, the case may not be about wages. The parties may agree that all wages have been paid. If you sue your employer for defamation and receive a settlement or judgment, the fact that your *employer* is the defendant (rather than some third party) should not necessarily make the payment wages.

However, 99% of the time, treating a portion of the settlement as wages is wise, and an agreed allocation is best. Plaintiff

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<sup>1 543</sup> U.S. 423 (2005)

<sup>2</sup> See Wood, 12 Ways to Deduct Legal Fees Under New Tax Laws, Vol. 165, No. 1, Tax Notes Federal (October 7, 2019), p. 111.

<sup>3</sup> See Wood, Writing Off Legal fees Just Got a Little Easier, Vol. 174, No. 6, Tax Notes Federal (2022),

<sup>4</sup> See Wood, Can Employment Plaintiffs Deduct Legal Fees Paid in Prior Years?, Vol. 168, No. 7, Tax Notes Federal (August 17, 2020), p. 1263.

<sup>5</sup> See Wood, New Tax on Litigation Settlements, No Deduction for Legal Fees, Vol. 158, No. 10, Tax Notes (March 5, 2018), p. 1387.

<sup>6 &</sup>quot;Service Explains Tax Consequences and Reporting Obligations for Employment-Related Settlement Payments," Program Manager Technical Advice (PMTA), 2009-035, Oct. 22, 2008, Doc 2009-15305, 2009 TNT 129-19.

<sup>7</sup> For full discussion of this IRS memo, see Wood, IRS Speaks Out on Employment Lawsuit Settlements, Vol. 124, No. 11, Tax Notes (September 14, 2009), p. 1091.



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and defendant should arrive at a wage figure that is large enough to make the employer comfortable that it is complying with its withholding obligations. But the wage component should not be so large to cause the plaintiff to refuse to settle. In a \$1M settlement, a plaintiff and defendant might agree that \$300,000 is wages subject to employment taxes, while \$700,000 is non-wage damages. The split might be 50-50, 80-20, 90-10, or any other figure. It all depends on the facts and on the relative bargaining power of the parties.

#### **Trap #4: Emotional Distress Damages Are Rarely Tax-Free**

Section 104 of the tax code shields damages for personal physical injuries and physical sickness. The exclusion used to be much broader. Before 1996 "personal" injury damages were tax free, so emotional distress, defamation, and many other legal injuries also produced tax-free recoveries. That changed in 1996, and since then, an injury or sickness must be physical to give rise to tax-free money.

Unfortunately, in the more than 25 years since section 104 was amended, there is still substantial confusion, and taxpayers. In large numbers of cases, the IRS and the courts continue to struggle with said exactly what "physical" means. It is clear that emotional distress alone is not enough. In fact, emotional distress damages—even with physical consequences such as headaches, stomachaches, and insomnia—are taxable.

In contrast, if there are physical injuries or physical sickness first which produce related emotional distress damages, those emotional distress damages are also entitled to tax-free treatment. Many plaintiffs struggle with the chickenor-egg issue of what comes first. But theoretically, once you have a qualifying physical injury or physical sickness, all the compensatory damages can be tax free, even though most of the damages may be for emotional distress.

Claims of post-traumatic stress disorder (PTSD) are increasing common in employment litigation, and PTSD arguably should be viewed as physical sickness. There is no definitive tax authority

stating that PTSD is or is not within the scope of the section 104 exclusion. However, there is now reliable medical evidence that PTSD is a type of readily observable physical sickness and is not merely a variety of emotional distress. A diagnosis of PTSD and the appropriate assertions of PTSD claims should enough for the parties to treat it as within the section 104 exclusion.

#### Trap #5: Tax-free Damages in **Employment Settlements Are Not Impossible**

Even in employment cases, some plaintiffs win on the tax front. For example, in Domeny v. Commissioner,8 Ms. Domeny suffered from multiple sclerosis ("MS"). Her MS got worse because of workplace problems, including an embezzling employer. As her symptoms worsened, her physician determined that she was too ill to work. Her employer terminated her, causing another spike in her MS symptoms.

She settled her employment case and claimed some of the money as tax free. The IRS disagreed, but Ms. Domeny won in Tax Court. Her health and physical condition clearly worsened because of her employer's actions, so portions of her settlement were tax free.

In Parkinson v. Commissioner,9 a man suffered a heart attack while at work. He reduced his hours, took medical leave, and never returned to work. He filed suit under the Americans with Disabilities Act (ADA), claiming that his employer failed to accommodate his severe coronary artery disease. He lost his ADA suit, but then sued in state court for intentional infliction of emotional distress and invasion of privacy.

His complaint alleged that the employer's misconduct caused him to suffer a disabling heart attack at work, rendering him unable to work. He settled and claimed that one payment was tax free. When the IRS disagreed, he went to Tax Court. He argued the payment was for physical injuries and physical sickness brought on by extreme emotional

The IRS said that it was just a taxable emotional distress recovery, and the fact that the state court case was brought for

intentional infliction of emotional distress gave the IRS good arguments. But the Tax Court said that damages received on account of emotional distress attributable to physical injury or physical sickness are tax free. The court distinguished between a "symptom" and a "sign."

The court called a symptom a "subjective evidence of disease of a patient's condition." In contrast, a "sign" is evidence perceptible to the examining physician. The Tax Court said the IRS was wrong to argue that one can never have physical injury or physical sickness in a claim for emotional distress. The court said intentional infliction of emotional distress can result in bodily harm.

#### Trap #6: It is Not Always Better for Plaintiffs to Have Little or No Wages

Many plaintiffs want little or no wages. In part, it may be to save their share of employment taxes. After all, employment taxes are partially borne by the employee and partially by the employer. For the employee, the taxes at stake are 7.7% of the pay (for the entire year) up to the wage base of \$147,000, and 1.45% of amount over \$147,000.

Another reason plaintiffs may favor reduced wages is to get a bigger net check at settlement time. If the check is not reduced by tax withholdings, the settlement may look better. Sometimes, their lawyers are the ones pushing for little or no withholding. If the plaintiff is upset that he is settling for only \$400,000 when he thinks he should get more, his lawyer may push for little or no withholding as a way to make the current check larger.

Some plaintiffs have the sense that they are better off if they receive gross pay rather than net pay. Sometimes they even think the wage versus non-wage fight is about tax versus no tax. The plaintiff may also want to pay his own taxes, later. But the plaintiff may end up worse off at tax return time the following year if they have trouble paying their taxes. A plaintiff who has always been a wage earner may never have made estimated tax payments, and may be undisciplined when it comes to financial management.

Finally, getting a Form 1099 may allow for more opportunities to claim an exclusion for physical injury or physical

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<sup>8</sup> FN T.C. Memo. 2010-9.

<sup>9</sup> FN T.C. Memo. 2010-142.

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sickness damages. It is not easy to take this position with a Form 1099, but it is vastly easier to claim it with a Form 1099 than it is with a Form W-2. It is effectively impossible with a Form W-2. Sometimes the wage allocation issue comes down to the plaintiff trying to position physical sickness money.

## Trap #7: A Form 1099 Does Not Foreclose Potential Tax-Free Treatment

You certainly should address the Form 1099 on your tax return, but on the right facts, you can explain that the payment was non-taxable. I have occasionally even seen serious physical injury cases for compensatory damages reported on a Form 1099. In such a case, it is easy to explain that the payment should not be taxable. Many payments are reported on Form 1099 as part of the general default reaction that companies have when making payments.

If a payment is \$600 or more, most businesses will issue the form. Indeed, if the settlement agreement is not explicit on the point, someone in the defendant's accounting department is likely to send out a Form 1099 in January. Plaintiffs routinely object to Forms 1099 once issued, but if the settlement agreement does not expressly say that the form will not be issued, the odds of getting the defendant to correct it (with a corrected Form 1099 that zeroes out the income) are slim.

In the employment context, many plaintiffs argue that their employer caused them physical injuries or physical sickness. Sometimes there as a physical or sexual assault, severe or minor in the workplace. Sometimes the employee claims that the employer caused physical sickness or exacerbated an existing physical sickness. Sometimes the employee claims that the workplace gave them PTSD.

The evidence from the pleadings and correspondence, and the medical documentation of such claims varies widely, from voluminous to non-existent. Employer responses vary widely too. Often, the employer and employee reach a compromise on the wording of the settlement agreement.

That wording may stop short of a clear agreement that a payment is for physical injuries and physical sickness. However, a compromise on wording may be the best the plaintiff can do at the time. The issuance of a Form 1099 is another matter. The Form 1099 regulations and form instructions say that a payment of compensatory damages for physical injuries or physical sickness should not be reported on a Form 1099.

However, the employer may not agree with that characterization. Even the settlement agreement may be inconsistent. The employer might agree to physical injury or sickness wording in the settlement agreement, but still insist on issuing a Form 1099. The issuance of the form certainly does not help the plaintiff's tax position. But the issuance of the form does not foreclose the plaintiff's argument that it should not be taxed.

#### Trap #8: Failing to Agree on Tax Treatment Has Risks

As a legal matter, a settlement agreement is not *required* to address taxes.

A few courts have suggested that taxes are such an essential part of the legal settlement that an agreement may fail if it does not include it. <sup>10</sup> In general, however, a legal settlement agreement can be enforceable even if it does not say if there will be tax withholding on some or all of the funds, and even if the agreement does not say anything about the particular IRS forms that will be issued.

Some defendants may like that, if talking about taxes before the plaintiff signs a release seems like asking for trouble. That way, the theory goes, the defendant can handle taxes however it wants, withholding on some or all, issuing Forms 1099 for some or all, etc. But why would any plaintiff or defendant want to sign a settlement agreement only to have yet another dispute about taxes later, one that could go back to court?

The risk may seem worse for plaintiffs, but it might be no fun for the defendant either. It is not merely theoretical. In *Redfield v. Insurance Company of North America,* <sup>11</sup> a man sued for age discrimi-

nation and wrongful termination. He won a judgment, affirmed on appeal. The company withheld taxes, so Redfield refused to sign a satisfaction of judgment. The employer brought an action in District Court for a judicial acknowledgment that the employer had satisfied its obligations under the judgment. The employer won in District Court, but Redfield appealed to the Ninth Circuit.

The appellate court reversed, saying that withholding was not proper. Because the employer withheld when withholding was not required under tax law, the employer had not yet satisfied the judgement. So after years of litigation, and countless dollars of expense, Insurance Company of North America remained on the hook for the settlement for the time being. In order to obtain its satisfaction of judgment on remand the employer would need to show that Redfield had gotten the improperly withheld amount refunded to it from the IRS and state tax authorities, or otherwise had the withheld amount credited to its account. There are a handful of other huge messes like this too.

In Josifovich v. Secure Computing Corporation, 12 an employment settlement was put on the record. The idea, they agreed, was for these basic terms to later be embodied in a formal settlement agreement to be executed by Josifovich and Secure. But while reducing the settlement to writing, the parties were unable to reach agreement on tax withholding. The court later pointed out with frustration that neither party had mentioned taxes during a seven-hour settlement conference.

Josifovich contended that *none* of the settlement should be subject to withholding, and yet another hearing was needed where the question of how much is wages could be fully briefed. Would anyone be happy with their lawyers in such a mess? Consider the inconvenience and cost of the plaintiff and defendant having to argue about withholding issues when one or both thought the case was resolved.

#### Trap #9: Settlement Agreement Wording Does not Bind the IRS But it Matters

The IRS and the Tax Court both

<sup>10</sup> See Josifovich v. Secure Computing Corporation, 2009 U.S. District Lexis 67092 (D.N.J. July 31, 2009); and Sheng v. Starkey Laboratories, Inc., 53 F.3d 192 (8th Cir. 1995), after remand, rev'd in part and aff'd in part 117 F.3d 1081 (8th Cir. 1997).

<sup>12 2009</sup> U.S. District Lexis 67092 (D.N.J. July 31, 2009)

focus enormously on what the settlement agreement says. The intent of the payor is a phrase that features prominently in tax cases, and there is no better statement of the payor's intent in legal settlement than the wording of the settlement agreement. There a numerous case where bad or neutral wording doomed a plaintiff's tax claim.

For example, in *Blum v*. Commissioner,13 a woman sued her lawyer for allegedly botching her personal physical injury suit. As a practical matter, it appeared that Debra Blum was trying to get her lawyer to pay her money that she had failed to collect for her physical injuries because of the alleged legal malpractice. Even so, her malpractice recovery was held to be taxable.

The *Blum* case is a poignant reminder that settlement agreement wording is very important, an opportunity a plaintiff should never let slip by. It is worth saying this again and again before the settlement agreement is signed. In IRS audits or queries, the IRS may well be satisfied with the settlement agreement and may not ask for additional documentation. If your wording is poor or even neutral, it is almost a certainty that the IRS will ask to see more information in an audit.14

#### Trap #10: Not Receiving a Form 1099 Does Not Mean the Payment Is Tax Free

Most people know that if they receive a Form 1099 reporting a payment, they need to report it on their tax return. It is presumptively income, that's what the IRS will think. Sometimes, you can explain if it is not income, but you at least must deal with the Form 1099 on your

But what if you do *not* receive a Form 1099? Is it like a tree falling in the forest with no one there to hear it? Hardly. Many people seem to think that if there is no Form 1099, there is no income, but that's not true. Numerous kinds of payments are not required to be reported on a Form 1099. And even if the payment is clearly required to be the subject of a Form 1099, the fact that the defendant

fails to issue one does not mean that it is not income.

There are hundreds of pages of tax rules about when companies must issue Forms 1099 for a wide array of payments. The forms come in many varieties, including for legal settlements. But if you do not receive the form, you still must consider whether it is income, capital gain, etc.

Even if you negotiate with the defendant for no Form 1099 for physical sickness money, you should still evaluate what evidence you have, whether you should disclose the payment on your tax return, etc. The language of the settlement agreement does not bind the IRS or state taxing authorities.

#### Trap #11: Technically, Employers Can Withhold Taxes on Legal Fees

I have never seen this happen and have only heard it threatened a few times. If the cause of action brought by the plaintiff requests solely lost wages, and nothing else, it is harder to argue that the settlement is not all wages. Specific claims under the Fair Labor Standards Act may be the best example of an all-wage case.

In Commissioner v. Banks, the Supreme Court held that legal fees are usually income to plaintiffs first, though they are income to lawyers too. In a pure wage case, could that mean withholding on the lawyer money too? Despite its age, the best guidance on this issue remains Rev. Rul. 80-364.15 There, the IRS considered whether attorney fees and interest awarded with back pay are wages for employment tax purposes.

The ruling describes three situations, which are worth reading if you want to get into the weeds. In 2009, the IRS released more discussion in PTMA 2009-035,16 Ominously, the memo states that if this issue (attorney fees as wages) arises, the IRS National Office should be contacted for guidance. More happily, in TAM 200244004, addressing an ADEA claim, the IRS concludes that the fees are not wages.

In large part, the issue seems to be ignored by tax practitioners and certainly by employment lawyers. Over many years, I have heard only a small handful of defendants even argue for withholding on fees, and I have never seen one make good on the threat. In my view, no case will settle if the lawyers are going to be shorted fees and have to try to get them back from the IRS or from their clients.17

#### Trap #12: Tax Gross-Ups are Rare

Tax gross ups are commonly requested but not commonly awarded by courts or by agreement. Even so, some plaintiffs succeed. Eshelman v. Agere Systems, Inc.18 is an important case about the negative tax consequences of a lump-sum. Eshelman was receiving pay in one year that should have been payable over multiple years. The court was persuaded that Eshelman needed extra damages to make up for the bad tax hit she would take on a lump-sum, as compared with the lower taxes she would have paid on each annual salary amount.

#### Conclusion

Many employment disputes are emotional and difficult, perhaps even more so than with many other kinds of legal disputes. Whenever possible, plan ahead for the tax issues, especially if you are a plaintiff or plaintiff's lawyer. Whichever side you are on, whenever possible, be specific about taxes so there is no dispute later. And whenever possible, get some tax advice before the settlement agreement is signed.

Robert W. Wood practices law with Wood LLP (www.WoodLLP.com) and is the author of Taxation of Damage **Awards and Settlement Payments** and other books available at www. TaxInstitute.com. This discussion is not intended as legal advice.

<sup>13</sup> T.C. Memo. 2021-18.

<sup>14</sup> For other cases of failed section 104 arguments, see Stassi v. Commissioner, T.C. Summ. Op. 2021-5; and Collins v. Commissioner, T.C. Summ. Op. 2017-74.

<sup>15 1980-2</sup> C.B. 294.

<sup>16</sup> FN Doc 2009-15305, 2009 TNT 129-19. For further discussion, see Wood, "IRS Speaks Out on Employment Lawsuit Settlements," Tax Notes, Sept. 14, 2009, p. 1091.

<sup>17</sup> For further discussion, see Wood, Should Employers Withhold on Attorney Fees?, Vol. 133, No. 6, Tax Notes (November 7, 2011), p. 751.

<sup>18 554</sup> F3d 426 (3rd Cir. 2009). See also Robert W. Wood, "Getting Additional Damages for Adverse Tax Consequences," Vol. 123, No. 4, Tax Notes (April 27, 2009), p. 423.

# CHANGING CYBERSECURITY CULTURE — IT'S NOT A PICINIC



## Lawyers should care enough about protecting client data to learn the basics of cybersecurity

PICNIC — an acronym for "Problem in chair. Not in computer." and a phrase commonly used by IT professionals to covertly describe user error to each other with some quiet snickering taking place. (e.g., Joe's computer crashes at random intervals all day. It's obviously PICNIC (https://www.urbandictionary.com/define.php?term=PICNIC).

The subject of Alex Jones' legal team's catastrophic cyber mistake came up recently at the State Bar of Montana's annual continuing education seminar (https://www.washingtonpost.com/nation/2022/08/03/alex-jones-sandy-hookphone/). The question posed to the audience of lawyers was how do you securely transfer files with clients to preserve the attorney-client privilege? The consensus answer to the question was something to the effect of, just do what the IT person says. While it is great to know that many lawyers have dedicated IT staff, it is not so inspiring that many lawyers are still not taking responsibility to protect their clients' closely guarded secrets. User error, or PICNIC, is the easiest way to defeat fancy cybersecurity software that law firms throw money at. This problem will not be solved with the application of cash. It requires a holistic investment in security culture.

Put aside the legal issues with electronic file transfers, Third Party Doctrine analogies, and comparisons of packet headers to old-fashioned envelopes. The question is, do you care about protecting your clients' information? Or if you don't care, do you think your clients want you to care? If yes, you need to care enough to make an investment in learning the basics of cybersecurity.

Lawyers need to worry about more than just ne'er do well computer hackers, but other lawyers, taking advantage of them. Take a lesson from the U.S. Navy JAG Corps. You know, the military lawyers portrayed in the TV show who, as military officers, should have the highest ethical standards in litigation.

Allegedly, a Navy prosecutor hid malware in his emails to the defense team in order to track their communications (https:// www.stripes.com/branches/navy/formergallagher-prosecutor-reassigned-amidscrutiny-of-navy-jag-corps-1.593746).

The greatest threat to cybersecurity is the human factor. Nearly 90% of security breaches are caused by human error (Tessian, 2020). As we look to address the greatest vulnerabilities to improving our Nation's defensive cyber posture, we must consider reshaping human behaviors. The resonating message for all entities is that cyber defense is not always a technical issue. While the technical IT team that secures the digital infrastructure for our institution serves a critical role, the behavior of our nontechnical staff has to be addressed. Understanding that careless actions provide a wedge in opening the door to ransomware attacks and data breaches. As managers and supervisors, we share the responsibility of providing a safe workplace where our people and property are protected. Educating our workforce communities that our most precious property are the assets we store digitally. As we would never leave the office without locking the door at the end of the day, providing our staff with the regular training needed to recognize risk and raise awareness that our digital assets must be protected.

The University of Montana is addressing this societal problem through workforce education and CyberMontana, an initiative funded by the 2021 Montana Legislature to strengthen the cybersecurity defensive posture of all organizations. The Montana economy is built around small businesses, defined as entities with less than 100 employees. Small businesses are highly dependent on informational technologies, and the lack of cybersecurity expertise in most small businesses is exceptionally high due to limited staffing. Few businesses have recognized the risk of not having any sort of cybersecurity policy in place to protect their resources,

yet these same businesses would likely be unable to conduct day-to-day operations without informational technologies. In mitigating risk, the highest liability is employee behavior.

CyberMontana has crafted a workforce education program specifically for Montana small businesses. Security Awareness Training (SAT) provides remote, asynchronous training sessions to educate users, promote discussion, and raise awareness of cyber threats. These short, 20-minute once-a-month training sessions provide a simple professional development model to reduce the greatest cybersecurity risk to all organizations their employees. The educational content has been developed and curated by cybersecurity professionals from the University of Montana.

CyberMontana's SAT program recognizes employees who complete the program by issuing a digital badge and once an organization reaches a minimum threshold for badged users, the business is validated for heightening its cybersecurity defensive posture. Employee education conducted on a regular basis is the first step in developing an organization's cybersecurity policy. The program helps organizations construct a culture where cybersecurity education is ongoing and is constantly "top of the mind" among employees. Completing the SAT badging program can be incorporated into the employee performance review process to recognize employees who have raised the cyber defensive posture of the organization by earning a digital badge.

The Montana Department of Commerce has recognized the importance of cybersecurity workforce training for the survival of small businesses by forming a public-private partnership (PPP) with CyberMontana to subsidize the cost of SAT to small businesses. The partnership provides businesses reimbursement to offset all costs for cybersecurity workforce

**MORE TECHNOLOGY, PAGE 27** 

# Gratitude, kindness and justice — can these competing ideals mix?

Last holiday season I told you about a homework assignment from Yale University where students learned the benefit of gratitude by physically going to the person for whom they're grateful and telling them. The practice improved the students' mood for over a month, perfectly illustrating the positive effects gratitude has on well-being. As I sat down to expand on this idea for the holidays, my mind wanted to rumble with this sticky question: how do we reconcile what we know about gratitude and kindness with our professional mission that often involves pointing out all the flaws in another person, building a case to tear them down? What are we doing to our own and our clients' mental health? Are we just supposed to keep those messages compartmentalized, proposing that it's good to practice gratitude and kindness, except at work? Ick. We wouldn't be building a case if justice didn't require it, so how can we make these philosophies intertwine to preserve our own and our clients' mental health?

The practice of law requires us to dig up, research, and pinpoint mistakes, but the habit of focusing on only the negative has some bad side effects. I already told you about rumination and pessimism, but how about the emotional cloud that's created for you and your client. This emotional dark cloud of disappointment in another impedes judgment and creates a maze of indecision — making it harder and harder with every piece of evidence learned to compromise, be rational, forgive, and move on. This maze is easy to see in family law when, for example, a client can't trade a parenting day that would usually be easy and convenient to trade because they're justifying conflict based on the past - it isn't fair, they're owed something, they're playing tit-for-tat, scorekeeping, sending a message, and

engaging in a life-long negotiation. Where a simple "can you do Thursday or not?" would do, both us and the client are led through this emotional, cloudy maze. Or finally, when we spend months or years building up a case against an opposing party, helping a client to see the strengths of their case and the wrongs that were clearly committed, it is no wonder that it is a shock to ask them to sign off on a settlement agreement, accept a poor outcome at court, or even to get justice at court but still feel no relief from the dark cloud that our year of research helped create. It's hard to see reality and logic after being steeped in a cloud of negativity for so long. Here, compartmentalizing isn't the

If you grapple with balancing the need to seek justice with the need to preserve your own and your clients' mental health (please tell me it's not just me!) here are the tips. You'll find these (though I've adapted to my liking) and others like it in an amazing new Netflix movie "Stutz," where Jonah Hill hilariously but life-affirmingly makes a movie about his own psychiatrist. Please take this preview then watch it and enjoy.

- 1. Practice Gratitude, the easy way, the hard way, and the super-power way. Gratitude will actually change your brain chemistry to help you find optimism in your future interactions, and to make it easier to learn and to be rational.
  - The easy way. Start a journal or say out loud three things you're grateful for every day. These might be the easy things that are easy to pinpoint, like family, friends, and abundance. Next, think of a few more things that might be more distant from yourself, like gratitude for nature, the work of a famous figure, or a non-profit.
  - The hard way. Include people or events that are hard to be grateful



MERI ALTHAUSER

Meri Althauser is an attorney of over 10 years practicing family law and mediation in Missoula. Her practice focuses on collaboration and solution-finding for her clients and their families. She also offers consulting services in workplace wellness, with a certification as a Workplace Wellness Specialist through the National Wellness Institute and as a Resilience and Thriving Facilitator through **Organizational Wellness** and Learning Systems.

for on your list. I'm grateful that an adverse client was on time, grateful that I have enough work, grateful that I have the skills to be called upon in an emergency.

- The super-power way. This is what Dr. Stutz on Netflix calls the "grateful flow." Take 2 minutes to run through this gratitude practice starting with the easy, moving to the distant, and adding in the hard-to-begrateful for. Don't just rattle through the names but really let each grateful feeling sink in. Let 10 seconds pass between each grateful thought. Next, start to summon another round of things you're grateful for, but don't actually envision anything specific. Stop in the moment you reach deep in your inner-workings to think of what you could possibly be grateful for and notice that feeling. The force that summons optimism and gratitude for any situation is the "grateful flow," the superpower that you always possess, that unshackles you from toxic emotion, and that tears down the maze of indecision based on the past.
- 2. Practice Loving Kindness. The easy

way, hard way, and super-power way here are the same, and Dr. Stutz calls this practicing "Active Love." This time, instead of gratitude, send well-wishes, love, and thankfulness to the person. Imagine the positive thought traveling through space and actually reaching your intended recipient.

- Easy: I send happiness and peace to myself, my kids, my family, my friends. I send peace to Greta Thornburg, Michelle Obama, and our mayor.
- **Hard**: I send happiness and gratitude to my ex, my former business partner, the opposing attorney in my upcoming trial, and the judge who did not agree with me whatsoever last week.
- Super-power: In all moments, I have the force that chooses to summon well-wishes.
- 3. Preach what you practice. We all have requirements for our clients like that they provide documentation to back up their statements, they respond to requests promptly, or even that they be in therapy. Try requiring them to give gratitude practice a shot. Not only

will this help them remain optimistic and positive, it will help them make better decisions down the road. This is already a part of the protocol in Collaborative Divorce, an alternative route to achieving divorce through a series of structured mediation sessions that start and end with gratitude for each spouse. We always start the conversation with stating the obvious, "this is going to sound weird, but..." and while the first attempts at mentioning what each spouse is grateful for are awkward and forced, the last attempt is tearful, heartfelt, and real. The practice of gratitude itself is no doubt included in the list of what the clients were grateful for.

Last, when times are especially dark, try walking your client through the "grateful flow" exercise, including sending some positive thoughts to the person that is seemingly making the day so dark. It might be weird, but that's OK. Having this superpower at the ready will help you separate the facts that support a correct outcome from the emotional turmoil and the maze of unfairness.



## When client confidences and courthouse security collide

A man attempted to rape a county employee inside of a courthouse bathroom. A criminal defendant who was scheduled to appear in court to enter a guilty plea on drug and weapon charges started a gun battle with sheriff's deputies outside of the courthouse. A person who was upset over the possibility of having his parental rights terminated shot and killed a state employee who was the main witness in the termination case. This incident also happened just outside of the courthouse.

Stories such as these are not one-offs. They are shared to underscore the reality that courthouse security throughout the U.S. is more than a hypothetical concern. Now, suppose the lawyers who represented these individuals were aware that their clients may be a threat to someone. Would they have an ethical obligation to disclose what they know, or must they remain quiet? If disclosure is necessary, to whom do they disclose?

To answer these questions, we need to turn to the ABA Model Rules of Professional Conduct (MRPC). Consider MRPC 1.6(b)(1) from which we learn that a lawyer may, but is not obligated to, reveal information relating to the representation of a client if the lawyer reasonably believes doing so is necessary to prevent reasonably certain death or substantial bodily harm. And be aware that when adopting this rule, some states went a bit further and altered the language found in MRPC 1.6(b)(1) in various ways in order to make disclosure mandatory. Regardless, the interesting question is this. What does the term "reasonably believes" mean in this context?

The general consensus seems to be that if a lawyer is thinking about making a permissive or mandatory disclosure under this rule, there needs to be something more than a generalized discomfort about the client. A feeling that the client might do something because the client is prone to violence or experiencing an unease over a possibility that violence might eventually erupt isn't enough. The lawyer's concern must be specific and,

if not imminent, reasonably certain to come to pass in the future if action isn't taken to prevent it. Stated another way, a disclosure can't be based upon a speculation about what a client might do.

One could also argue that MRPC 3.3(b) would be in play, at least in some circumstances, because this rule requires a lawyer to disclose information that is otherwise protected by MRPC 1.6 if the lawyer knows that a person intends to engage in criminal conduct related to an adjudicative proceeding and any effort to dissuade the client from doing so has failed. I suspect most of us think of this obligation more in the context of preventing false evidence from being offered to the court, but there is no language in the rule or the associated commentary that would so limit its application. A criminal defendant's intent to shoot a key witness is unquestionably criminal conduct related to an adjudicative proceeding as I see it. Also note that while MRPC 3.3(b) is limited to adjudicative proceedings, MRPC 1.6(b)(1) is not.

If a lawyer eventually reaches the point of having a reasonable belief that a disclosure is necessary to prevent reasonably certain death or substantial bodily harm, should the lawyer inform the client in advance of making any permissive or required disclosure? If time permits and an opportunity presents itself, a lawyer should strongly consider doing so. Not only would this be the judicious thing to do, but an argument could be made that MRPC 1.4 Communication and MRPC 3.3(b) might make it mandatory. Think about a lawyer's duties to keep a client reasonably informed and allowing a client to make informed decisions under Rule 1.4 coupled with the duty to take reasonable remedial measures under Rule 3.3(b). After all, there's a possibility the client could be talked down from the ledge, so to speak.

Thus, and again only if there is time and an opportunity, a lawyer should consider sharing with the client the specific

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MARK BASSINGTHWAIGHTE

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1,200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake **University Law School** 





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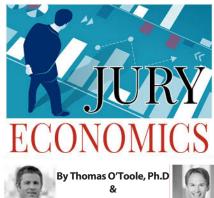
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# Persuading a jury can be less about proving your case than how the jury feels about it

Every litigator is taught from the early days of law school that evidence and the burden of proof are the foundation upon which trial strategy is built. In fact, most cases go through the evidence-gathering phases of discovery but fail to reach trial due to settlement or rulings from the judge, meaning litigators spend most of their careers in the evidence-gathering phase of their case. Consequently, on the rare occasions where cases proceed to trial, litigators focus their case presentations on showing jurors all the evidence that proves or disproves by a preponderance of the evidence the claims in the case. After all, that is exactly how the jurors are told to evaluate the case.

Any seasoned litigator has had the experience where jurors render a verdict for the other side despite that litigator's strong and honest conviction that the evidence clearly favored his or her client. The problem lies in how litigators think about the burden of proof and standards such as preponderance of the evidence. The fact that they have spent most of their working life in the evidence-gathering phase of litigation makes it too easy to think of the burden of proof aspect of a case as some sort of wholistic, comparative evaluation of the case by jurors. It can be but is often not. Instead, rather than being some sort of quantitative analysis, the preponderance of the evidence is more of a feeling for jurors than anything else. In short, there is a difference between the feeling of what the evidence is and what it actually is. Too many litigators focus on the latter and lose sight of the former.

A classic example of this conflict is an insurance bad faith dispute where an insured weaves the narrative of the stereotypical insurance company desperately searching for any reason to deny coverage and the insurance company responds by walking jurors through the long and obscure policy that they think proves the denial of coverage was justified. In these instances, the attorneys for the insurance



company often feel the contract provisions are clear and they should win the case, only to have the jury find for the

sions are clear and they should win the case, only to have the jury find for the plaintiff. The problem in this situation is the defense efforts to bury the jurors in highly technical contract language that is difficult to understand. Sometimes it is compounded by the need to connect two or more different provisions in the policy to really understand why coverage was denied. For the defense attorney, this feels like they are doing their job: they are showing the jurors all the evidence that favors them. However, to a confused juror, this just reinforces the stereotype of an insurance company desperately looking for any fine print it can use to deny coverage and save money. After all, if this was a legitimate denial of coverage, why does it require so much complexity and confusion. In this instance, the feeling the jurors have about the evidence often trumps the actual evidence, leading to verdicts that make defense attorneys want to jump out the window.

If preponderance of the evidence is a feeling, not a quantitative and comparative analysis of the entirety of the evidence, it has critical implications for trial presentation. In this month's column, we identify three key implications for case strategy development and how litigators can better manage jurors' *feelings* about the evidence beyond the typical approach

of burying them in it.

- 1. A good theme drives jurors to the right evidence. Every case presentation should begin with what the jurors want to believe about the case. Motivated rationality tells us that, if a litigator crafts a case narrative consistent with jurors' personal beliefs and experiences, they will seek out the evidence in the case that reinforces that narrative since it is consistent with what they know and want to believe. That is why case strategy development efforts should begin early in discovery. Too many attorneys see discovery as the time to look at all the puzzle pieces and try to figure out what picture they make, but in reality, it should be more akin to focusing on the picture on the front of the puzzle box and then going out and finding the pieces that make that picture.
- 2. The quality of the evidence is more important than the quantity of it. Any seasoned litigator has had the experience of an adverse verdict despite the fact that there was more evidence favoring their client than the other side. This shows that sometimes a party only needs one or two memorable pieces of evidence. In fact, in complex cases, efforts to bury jurors in the evidence favoring one side only compounds confusion in the case. Consequently, trial strategy development efforts should focus on narrowing the case presentation to three to five key pieces of evidence that the jury will hear about over and over again. Trial is ultimately a battle of salience, since research shows that jurors will forget the majority of what they heard over the course of trial by the time they reach deliberations. That means it is most important to win the battle of salience, influencing what jurors remember most. If everything is important, nothing is important.
- 3. Good evidence is symbolic of something larger. When making

**MORE JURY, PAGE 29** 

## **SAVE THE DATES FOR 2023 CLE**

The State Bar of Montana will be returning to the Emerald Isle for a Continuing Legal Education seminar in 2023.

The second annual Celtic CLE in Cork, Ireland, is among a number of popular State Bar of Montana CLE programs recently scheduled to return in the coming year. Preregistration is now being accepted for the program, which will be May 22-26. The seminar is a unique opportunity to learn from faculty of the University of Montana's Alexander Blewett III School of Law and the University of College Cork School of Law.

Other 2023 CLE from SBMT will include:

Real Estate CLE: Friday, Feb. 17, Fairmont Hot Springs, Anaconda. Located within a short drive of Discover Ski Area's 2,100 acres of downhill trails, one of Montana's finest Nordic trail systems, and 650 miles of snowmobile trails, this will be a great chance to combine CLE with a President's Day weekend winter getaway.

St. Patrick's Day CLE: Friday, March 17, in Butte. Details and location TBA.

Bench Bar CLE: Friday, April 14, Holiday Inn Downtown Missoula. One of the bar's most popular CLE every year will be back with in-person instruction from respected Montana jurists and practitioners.

Note: CLE & Ski will not be held in 2023, but it will be back at Big Sky the winter of 2024. Watch for details as they become available.

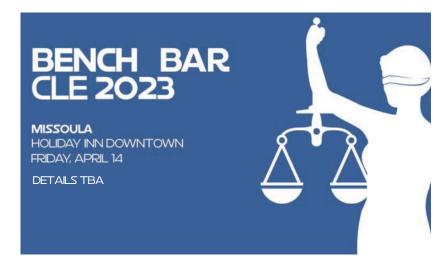


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#### **TECHNOLOGY**

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education, once they have been recognized through the validation process. In essence, it is a free training program for the workforce, because cyber threats to small businesses threaten our whole state economy.

Cyber threats to individual businesses can cut across entire sectors. Many large cyber incidents started small. If our small businesses have their lives cut short by cyber threats, our economy cannot grow to its potential. What happened to Colonial Pipeline's fuel distribution can happen to Montana's agricultural distribution.

Government also has a public safety role to play here. So many different public and private entities have our personal information in digital form.

The compromise of that information is not just a problem for the individual concerned. It creates negative economic consequences on a larger scale. One role of government is to ensure that businesses and individuals have a fair and efficient business environment. Cyber breaches cause friction in business, leading to an inefficient commercial environment where risks are distributed unfairly. People become unwilling to share their information or, worse, lose money because of data breaches. It is in our interest, as taxpayers, for our government to take the lead to help every citizen better understand cyber risks and how to avoid them. The CyberMontana training program makes entry-level cyber safety training available and, with state government subsidies or tax incentives, very affordable.

Businesses need to earn the trust of their customers. This is especially true for law firms. A data breach can be catastrophic for any small business. It is generally accepted that over half of small businesses that fall victim to a data breach will close within six months. https://www. inc.com/joe-galvin/60-percent-of-smallbusinesses-fold-within-6-months-of-a-cyber-attack-heres-how-to-protect-yourself. html Data breaches undermine consumer confidence and encourage consumers to take their business elsewhere, like a competitor that offers better protection. Better protection requires everyone in the company to support a culture of cyber safety. For most of us, that requires small but consistent efforts to change our culture. Join us at https://cybermontana.org/ security-awareness-training



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#### **Don Vincent Snavely**

Don Vincent Snavely died on Sept. 20 at St. Patrick Hospital in Missoula from COVID-19, a pulmonary embolism, and



Snavely

complications of Alzheimer's disease. He was 75.

Don was born March 28, 1947, to Eleanor Ghini and Harold Snavely in Highwood, Illinois.

Don earned his B.A. degree, magna cum laude, from Lake Forest College

(Illinois) in 1969, and earned his J.D. degree, cum laude, from Arizona State

University Law School in 1974. He was a member of the State Bar of Montana and the State Bar of California, the U.S. 9th Circuit Court of Appeals, and U.S. Supreme Court. Don was a principal in the Snavely Law Firm in Missoula, where he practiced civil litigation.

Don began his law career in San Diego from 1975 until 1979. He moved to Missoula in 1979 where Don joined as an associate at Mulroney, Delaney and Dalby until 1981, at which time he opened his own firm. In 1983 he became a principal of the firm, Snavely & Phillips, Missoula. He left the firm in 1986, after which he was a solo practitioner.

Don had many different interests in his life. He could work in his shop on his race car, using his body grinder, setting

his jeans on fire, spilling gas all over himself and the next day be in court in a suit and tie, arguing a case or doing a brief for the Supreme Court. He was truly a Renaissance Man, he could do many things well, an AMAZING MAN, we all loved. I cannot forget his love for playing solitaire on his computer.

In lieu of flowers the family has requested donations be made to the Missoula Art Museum, Missoula Symphony, or Partners in Home Care Hospice. The family would like to thank St. Patrick Hospital, acknowledge the wonderful care that was given to Don from the doctors, nurses, entire staff and ER. Online condolences may be left at gardencityfh.com.

#### RISK

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concern which has necessitated a decision to disclose if the client is unwilling to change course and thereby alleviate the concern. In addition, the ramifications of the decision to disclose, meaning that withdrawal from representation may need to occur, should be shared as well. The reason is that disclosure is going to negatively impact the attorneyclient relationship, if not result in the client firing the lawyer. This outcome has consequences. Of course, if the client has already put a plan in motion and/or the lawyer has a legitimate concern about his or her own personal safety if the client

were to be told, there would be no time or opportunity to have this conversation.

Once a decision to disclose is made, what can be disclosed and to whom should it be made? From the commentary to MRPC 1.6 we learn that when disclosure becomes necessary, the information that can be shared should be limited to only what is necessary to enable the affected persons and/or the appropriate authorities to prevent the client from successfully committing the crime. Stop there because it's important to recognize that the fallout to the client needs to be minimized as much as possible. For example, steps should be taken to prevent opposing counsel from having an opportunity to, if you will, weaponize

the disclosure.

A decision as to whether to disclose is often going to be a difficult one to make. For example, who's to say a client won't change his mind and reasonable minds can disagree as to whether any given set of circumstances would necessitate a permissive or mandatory disclosure. Here's the rub, however. There are always going to be clients out there who are bad people who will do bad things. That's just the way it is. Should you ever find yourself representing one of these folks, don't minimize the risk they might truly represent. There may come a time where an ability to keep your local courthouse and associated grounds secure depends upon it.

#### **IURY** FROM PAGE 26

complex decisions, the research makes it clear that people look for shortcuts, often without realizing what they are doing. We have often cited Daniel Kahneman's famous quote about the "essence of intuitive heuristics," which is that, "When faced with a difficult question, we often answer an easier one instead, usually without noticing the substitution." One way in which jurors find these kinds of shortcuts is by finding symbols in the case that unlock some greater meaning that brings clarity

to the issues. Consequently, rather than focusing on the quantity of the evidence, litigators should instead focus on identifying evidence that symbolizes key components of their larger themes and narrative. This may sound obvious, but it is much more difficult than one might think. Mock jury research routinely highlights how jurors attach importance to evidence in a case that none of the attorneys thought was significant going into the mock trial. The art of trial strategy development and persuading jurors is identifying the symbols in your case and weaving them together to tell a compelling story that is

consistent with the kind of world jurors want to believe in.

American poet, Maya Angelou, once unintentionally gave incredible jury strategy advice when she said, "People will forget what you said, people will forget what you did, but people will never forget how you made them feel." At trial in front of a jury, it is not about proving you are right; instead, it is about making jurors feel you are right."

Thomas M. O'Toole, Ph.D. is President of Sound Jury Consulting in Seattle. Kevin R. Boully, Ph.D. is Senior Consultant at Perkins Coie in Denver.

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**DEPUTY OR SENIOR DEPUTY COUNTY ATTORNEY:** Full-time position representing Yellowstone County in Department of Public Health and Human Services (DPHHS) civil child abuse and neglect matters; does related duties as required. Eligible for telework upon supervisor approval after 6 months of continued employment. To see full listing or to apply visit www.yellowstonecountymt.gov/human resources/.

**ASSOCIATE ATTORNEY:** Wagner, Falconer & Judd with offices in Billings, Montana, Brookfield, Wisconsin, and Minneapolis is seeking a general practice attorney with a passion for service that is licensed to practice law in Montana The lawyer would assist the firm in servicing its contract for a group services legal plan with thousands of members across the state. The position involves assisting clients with their legal needs through telephonic consultations, document review, legal research, and limited scope representation in many different areas of law. Applicants should have strong interpersonal skills, and an eagerness to help people solve problems. We work in a collegial, team-oriented environment, We value work-life balance, offer telecommuting options to qualified employees, as well as a competitive salary and benefits package. Email tkrumwiede@wfjlawfirm.com.

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Doney Crowley P.C. seeks an attorney to join our team as an associate or of counsel attorney. Established by Ted Doney in 1987, the Doney Law Firm focuses on environmental/natural resource law, water law, civil litigation and administrative law. Ideal candidate will be an energetic, hardworking self-starter, with at least 2 years of experience, and licensed to practiced law in Montana. Candidate should be interested in. and ideally have experience in, complex civil litigation. Position is in-person at either the Firm's Helena or Red Lodge office locations, with flexibility for partial remote work. Send a cover letter and resume to: ATTN Sara Carpenter, Firm Administrator, Doney Crowley P.C., PO Box 1185, Helena, MT 59624; scarpenter@doneylaw.com

ASSOCIATE ATTORNEY: Wylie Baker LLP has an immediate opening for a full-time associate attorney with 2+ years of experience to work on real estate transactions, business transactions, and land use issues. Our firm exclusively practices transactional law in northwest Wyoming and Teton Valley, Idaho, and has offices in Jackson, WY and Victor, ID. To apply, please email a cover letter, resume,

and writing sample to sherri@wyliebaker.com.

**ASSOCIATE ATTORNEY:** Urick Law Firm is looking to hire a minimum of one permanent, associate attorney. Law students or practicing attorneys are welcome. Beginning salary will be based on experience with a signing bonus. Urick Law Firm is a well-established, small firm with a solid reputation in Central Montana. This firm deals extensively in all property matters, water law, estate planning, probates, civil litigation, contracts, collections, and other areas. This is an excellent opportunity to grow as an attorney in a work environment without all the stress that comes with being a new attorney in a large firm. Our loyal client base is expanding exponentially, as there is an overwhelming amount of work in central Montana. As such, there is great opportunity for advancement in pay and fast tracking to becoming a partner in the firm. You will be handling your own caseload and clients, with experienced mentoring, as soon as you are ready. To apply, email office@uricklawfirm.com

ASSOCIATE ATTORNEY: The Law Office of Emma S. Buescher is looking for a full-time family and criminal law associate attorney to ensure smooth running of the office by providing effective case management. Associate attorneys' day-to-day responsibilities typically include: Scheduling and conducting initial consultations with potential clients; coordinating and attending court hearings, trials, and depositions; organizing and maintaining paper and electronic case files; providing general case management for independent case load. To apply, email emma@eblawoffice.com.

ASSOCIATE ATTORNEY: Very busy firm is looking for an associate attorney in Missoula, Montana. This position will mainly handle criminal defense cases in Missoula, Montana. Minimal travel is required. The firm offers Health, vision and dental benefits as well as possible bonus structure on top of base salary. Must be licensed to practice law in the State of Montana. Please provide a CV as well as some information about your experience with criminal law in your application. Email judnich@gmail.com.

ASSOCIATE ATTORNEY: Trial-focused firm centered in Bozeman is looking for an Associate to join our busy practice. The Firm has offices in Bozeman, Big Sky, and Livingston, but also handles cases throughout the state. Areas of practice include criminal, family, and plaintiff's civil cases. Independent management of clients and caseload, with team centered approach to trial, litigation, and case resolution. Independent case management and caseload can allow for flexibility. Firm supports abundant

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COMMERCIAL ATTORNEY: Frampton Purdy Law Firm, a busy, boutique firm in Whitefish, Montana, is seeking a commercial attorney to assist with business transactions, business formation, and commercial/real estate transactions and related issues. Depending on experience, attorney's practice could focus on tax-related matters (advising, compliance, reporting, controversy), estate planning and administration. To apply, email admin@ framptonpurdy.com

**DEPUTY CITY ATTORNEY:** The City of Billings City Attorney's Office is seeking two Deputy City Attorneys (Criminal) who will perform a variety of professional duties and a full range of legal services related to municipal criminal prosecution. The successful applicant will prepare and prosecute misdemeanor criminal cases in Municipal Court and represent the City of Billings in criminal proceedings before all other courts, administrative agencies and boards as assigned. Position #1 – will primarily prosecute misdemeanor criminal offenses. Position #2 will primarily prosecute domestic violence offenses. See full listing and download City of Billings application at www.billingsmt.gov jobs.aspx.

**DEPUTY COUNTY ATTORNEY:** The Lewis and Clark County Attorney's Office seeks a deputy county attorney. This position primarily prosecutes criminal offenses, but may also represent county government in legal proceedings, and advise county officials on civil matters. To see full listing and apply, visit www.lccountymt.gov/hr/jobs.html.

**DEPUTY COUNTY ATTORNEY: Hill County** Attorney's Office has two deputy county attorney positions available. Primarily prosecutes criminal matters in Justice Court, District Court and Youth Court, and represents the Department of Public Health and Human Services in abuse and neglect cases. Advises the school districts in civil matters. Performs all duties of the County Attorney in the County Attorney's absence, or at the direction of the County Attorney including representing the county or state in civil matters in various courts of law, and advising county officials and the public on legal matters of concern to the county or the various county departments. To apply, email pfeiferb@hillcounty.us.

**DEPUTY COUNTY ATTORNEY:** This is a full-time position with the Madison County Attorney's Office performing a wide variety of routine to complex criminal

prosecution and/or litigation duties in the State and Federal court systems including misdemeanor and felony criminal violations, Youth Court, and HB640 matters reported by Law Enforcement and DPHHS and does related duties as required. The Deputy County Attorney is responsible for prosecuting felony and misdemeanor offenses within Madison County, Montana; prosecutes juvenile offenses in Youth Court; represents agencies of the State of Montana, including the Department of Public Health and Human Services in matters related to HB640 reports; handles involuntary commitment hearings and other matters. Applications must be submitted online at madisoncountymt. gov under the Deputy County Attorney job posting. Please include Resume, Letter of Interest, and a Writing Sample. Please also provide a list of three employment-related references with valid contact information. With questions, please contact the Madison County Attorney's Office at (406) 843-4233.

**LAWYER 1:** This position at the Montana Department of Health and Human Services provides legal support to and representation in judicial or administrative proceedings for the department programs. Duties include counseling, providing department components with legal opinions and options, contract review and negotiations, research, assistance with the administrative rule review and legislative processes, and legal assistance in the development of department programs for policy/procedure, etc. For full job description, email April. Vercoe@ mt.gov. Applicants must apply through the Montana State Careers Website: Statecareers.mt.gov

**NATURAL RESOURCES ASSISTANT ATTORNEY GENERAL:** The ideal candidate can work independently and contribute to our mission "To recover damages for natural resources injured by the release of hazardous substances and to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources." The NRDP Assistant Attorney General represents the State of Montana in complex civil litigation and settlement negotiations involving natural resource damage (NRD) cases in federal and state courts. These cases are often high profile and technically complex. See full listing at https://bit.ly/NAT-RESOURCES.

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**LEGAL ASSISTANT/PARALEGAL: Law** firm seeking a full-time legal assistant/ paralegal to support attorneys in busy civil litigation practice in Bozeman office. Strong organizational skills, attention to detail, computer and document management skills a plus. Competitive salary and benefits. Please submit cover letter, resume and references by email to: creichenbach@cristlaw.com

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**GREAT FALLS:** Office space for rent at 300 4th St. N., Great Falls, MT. Will accommodate one professional and one support staff member; access to two conference rooms; private parking; optional use of reception services; close proximity to Cascade County Courthouse. \$800.00/month negotiable depending on space/service requirements. Please direct inquiries to Emma at eedwards@ silverstatelaw.net.

#### **CONSULTANTS & EXPERTS**

**BANKING EXPERT:** 34 years banking experience. Expert banking services including documentation review, workout negotiation assistance, settlement assistance, credit restructure, expert witness, preparation and/or evaluation of borrowers' and lenders' positions. Expert testimony provided for depositions and trials. Attorney references provided upon request. Michael F. Richards, Bozeman MT 406-581-8797; mike@mrichardsconsulting.com.

**CONDEMNATION EXPERT:** 21 years Condemnation litigation for state agency. 40+ years active litigation. Services include case analysis, evaluation of appraisals, negotiation assistance and strategy. Expert testimony on recoverable attorney fees and costs. Opportunity for lead and co-counsel on select cases. Email inquiries to ed@mtjustcomp.com.

#### FORENSIC DOCUMENT EXAMINER:

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Inspection Crime Lab. Retired from the Eugene, Oregon, P.D. Qualified in state and federal courts. Certified by the American Board of Forensic Document Examiners. Full-service laboratory for handwriting, ink and paper comparisons. Contact Jim Green, Eugene, Ore.; 888-485-0832. Website at www. documentexaminer.info.

#### **PSYCHOLOGICAL EXAMINATION & EXPERT**

**TESTIMONY:** Montana licensed (#236) psychologist with 20+ years of experience in clinical, health, and forensic (civil & criminal) psychology. Services I can provide include case analysis to assess for malingering and pre-existing conditions, rebuttal testimony, independent psychological examination (IME), examination of: psychological damage, fitness to proceed, criminal responsibility, sentencing mitigation, parental capacity, post mortem testamentary capacity, etc. Patrick Davis, Ph.D. pjd@dcpcmt.com. www.dcpcmt.com. 406-899-0522.

#### **EVICTIONS**

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#### **MEDIATION**

**MEDIATION/SETTLEMENT MASTER:** Guy Rogers of the Brown Law Firm (Billings and Missoula) announces that he has wrapped up his 35-year litigation practice and now works solely as a mediator/ settlement master. Guy handles mediations throughout Montana and works in his Bigfork/Missoula office during the summer months. Guy is a member of the National Academy of Distinguished Neutrals (NADN), and mediations can be scheduled through its website. Guy can also be reached at grogers@brownfirm.com (Legal Assistant Sylvia Basnett / sbasnett@brownfirm.com). Phone: 406-248-2611.



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